

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EVERT L. EOFF,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. CO5-5324FDB

ORDER DENYING CERTIFICATE
OF APPEALABILITY

Petitioner moves for a certificate of appealability regarding denial of his 28 U.S.C. § 2255 motion to Vacate, Set Aside, or Correct Sentence. The Order denying Petitioner's 2255 motion rejected his claim of ineffective assistance of counsel for failure to appeal conviction and sentence, which 270-month sentence was not illegal, as it was less than the maximum 30-year sentence and was not based on a Sentencing Guidelines calculation. Petitioner's claims of prosecutorial misconduct occurred prior to the entry of the guilty plea and are procedurally barred. Petitioner did not appeal the agreed-upon 270-month sentence and is now procedurally barred. Petitioner was represented by three separate lawyers, and no evidence was presented that a mental health examination was needed. ACCORDINGLY,

IT IS ORDERED: Petitioner's application for a certificate of appealability [Dkt. # 25] is DENIED.

DATED this 13th day of March, 2006.



FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE